

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

**Honorable Ronald H. Sargis**  
**Bankruptcy Judge**  
**Sacramento, California**

**June 21, 2023 at 2:00 p.m.**

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1.	<a href="#"><u>23-21407</u></a> -E-11 <b>BELLA VIEW CAPITAL, LLC</b>	<b>STATUS CONFERENCE RE: VOLUNTARY PETITION 4-28-23 [1]</b>
	<a href="#"><u>CAE-1</u></a>	

Debtor's Atty: Peter G. Macaluso

Notes:

Trustee Report at 341 Meeting lodged 5/15/23. Debtor did not appear. Continued to 6/12/23.

[BVC-1] Order on Debtor's Motion to Convert Case to One Under Chapter 11 filed 5/15/23 [Dckt 15];  
Notice of Chapter 11 Bankruptcy Case filed 6/7/23 [Dckt 30]

Substitution of Attorney for Debtor filed 5/31/23 [Dckt 22]; Order granting filed 6/2/23 [Dckt 27]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color:red">XXXXXXX</span>, 2023.</b>
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Debtor initially commenced this case as one under Chapter 7, but shortly after filing sought conversion to Chapter 11. The court issued its order converting this case to one under Chapter 11. Order, Dckt. 15.

On Schedule A/B Debtor lists \$3.7MM in real property assets. Dckt. 26. Debtor's other assets that are now property of the bankruptcy estate consists of \$69 in cash and \$500 in office furniture and equipment. *Id.*

On Schedule D, Debtor lists (\$5,280,375) of claims secured by the real property. Debtor lists (\$17,111) in unsecured claims on Schedules E/F. *Id.*

At the Status Conference, XXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Chapter 11 Status Conference having been conducted by the court, and upon review of the files in this case, report of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on XXXXXX, 2023**. If the Plaintiff-Debtor has filed and set for hearing the motion for default judgment, the court will continue the Status Conference to the hearing on the motion for default judgment.

2. <a href="#"><u>23-20380-E-12</u></a> <a href="#"><u>WW-4</u></a>	<b>TIMOTHY WILSON</b> <b>Mark Wolff</b>	<b>MOTION TO EMPLOY HANK SPACONE</b> <b>AS CONSULTANT(S) O.S.T.</b> <b>6-15-23 [95]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 15, 2023. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 21, 2023. Dckt. 91.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<b>The Motion to Employ is granted.</b>
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Timothy Wilson ("Debtor") seeks to employ Hank Spacone ("Consultant") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment

of Consultant to provide professional services relating to investigating the potential value of the real property commonly known as 16030 Schafer Ranch Road, Pioneer, California (“Property”) in Debtor’s bankruptcy estate and reporting findings to Debtor, the Chapter 12 Trustee, and the court. Debtor also requests the court approve fees up to the sum of \$5,000 without the necessity of further court approval. Upon the completion of termination of Consultant’s employment, Consultant will file a disclosure of compensation with the court. Pursuant to Local Bankruptcy Rule 9014-1(d)(5)(B)(iii), Debtor is authorized to combine the request to employ a professional and payment of their fees.

Debtor argues that Consultant’s appointment and retention is necessary as a third-party to provide expertise into the listing price and value of Debtor’s Property, as this has been questioned by the Chapter 12 Trustee and creditors.

Consultant testifies that the primary purpose of the consulting service is to investigate the value of the Property. Consultant states they have extensive experience in complex reorganization and liquidations, and has provided consulting services to corporate and individual clients in many industries. Consultant testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

## **DISCUSSION**

The Debtor has tried, on multiple occasions, to prosecute Chapter 12 bankruptcy cases. In two of these he performed the Chapter 12 plan for several years, and then unfortunately due to life events could not complete the plans. Upon the filing of the present case, one of Debtor’s main creditors, Umpqua Bank has come forth objecting to the proposed Chapter 12 Plan. Umpqua Bank challenges Debtor’s ability to prosecute a Plan given the multiple prior attempts and failures.

At a recent hearing counsel for the Debtor/Debtor in Possession and counsel for Umpqua Bank had a productive discussion about Debtor’s plan for the liquidation of the real estate, as opposed to prior plans to cure the defaults on Umpqua Bank’s claim and other debts. Umpqua Bank, noting that its claim has increased several hundred thousands of dollars over the last decades of bankruptcy cases, questions the Debtor/Debtor in Possession’s ability to actively market and sell the real estate. It also questions Debtor/Debtor in Possession’s valuation of the real estate.

Counsel for Debtor/Debtor in Possession and Umpqua Bank discussed their clients mutual interests in the prompt marketing for the real estate so that a commercially reasonable sale can be conducted. This allows the Debtor to ultimately preserve his exemptions, and possible surplus value, in the real estate. It allows Umpqua Bank to reduce its expenses, not just in this case (which it would claim as part of its claim) but the costs of having to foreclose on the real estate, secure it, insurance it, pay taxes, marketing, and then selling it.

The decision of the Debtor/Debtor in Possession to prosecute a Chapter 12 Plan for the commercially reasonable sale of real estate and Umpqua Bank’s economic reality analysis demonstrates how even long time legal opponents can become economic allies through the “magic of bankruptcy.”

Given the history between these parties, they discussed bringing in an independent third-party to assist in the marketing and sale process. The present Motion seeks such employment to provide the

participation of such professional, in a capacity similar to that of an examiner, to provide his independent analysis and opinion as to the commercially reasonable sale value of the real estate and the marketing. This will assist not only with the commercially reasonable sale of the real estate, but the communications between Debtor/Debtor in Possession and Umpqua Bank.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Consultant, considering the declaration demonstrating that Consultant does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Hank Spacone as Consultant for the Chapter 12 Estate on the terms and conditions set forth in the Consulting Agreement filed as Exhibit A, Dckt. 97. Additionally, Consultant is allowed the payment of fees, up to \$5,000, without further court approval, pursuant to 11 U.S.C. § 328. Any fees in excess of \$5,000 is subject to court approval.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Timothy Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Hank Spacone ("Consultant") as Consultant for Debtor on the terms and conditions as set forth in the Consulting Agreement filed as Exhibit A, Dckt. 97.

**IT IS FURTHER ORDERED** that Consultant is allowed the following fees and expenses as a professional of the Estate:

Hank Spacone, Consultant employed by the Debtor

Fees in the amount \$350 per hour, not to exceed \$5,000 without further court approval, to be distributed on the terms set forth in the Consulting Agreement. Exhibit A, Dckt. 97.

No additional compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330, and the allowance of fees pursuant to this order is subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that upon completion or termination of employment, Consultant shall file with the court a disclosure of compensation.

3. [22-23180-E-12](#) **HARDAVE/SUKHBINDER DULAI** **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#) **VOLUNTARY PETITION**  
**12-8-22 [1]**

Debtors' Atty: Bruce Charles Dwiggins

Notes:

Continued from 5/11/23

[DWL-1] Order denying Motion to Confirm Plan filed 5/16/23 [Dckt 82]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span>, 2023.</b>
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**JUNE 21, 2023**

On May 11, 2023, the court denied confirmation of the Debtor/Debtor in Possession's proposed Chapter 12 Plan. One of the key factors in denying confirmation was that the Debtor/Debtor in Possession had not provided sufficient economic information for the court to conclude that the proposed plan was economically feasible.

At the Status Conference, XXXXXXX

#### **MAY 11, 2023 STATUS CONFERENCE**

The May 11, 2023 Status Conference was conducted in conjunction with the hearing on the confirmation of Debtor's Proposed Chapter 12 Plan. The court denied confirmation of the proposed plan rather than continuing the hearing. The reason for not continuing the hearing is that the consensus of the parties in interest was that in light of the amendments to what was proposed, starting with a "clean slate" for review and further proceedings was preferred. The court concurs.

Debtor/Debtor in Possession's counsel is actively working with the Chapter 12 Trustee and creditors, with much headway having been made.

## **APRIL 13, 2023 STATUS CONFERENCE**

The court's review of the Docket discloses that Amended Schedules were filed on April 11, 2023. Dckt. 55. Counsel for the Debtor in Possession reported that there on ongoing discussions about resolving plan issues. The Chapter 12 Trustee reported that the First Meeting of Creditors has been continued to April 14, 2023.

## **MARCH 23, 2023 STATUS CONFERENCE**

On March 16, 2023, the Debtor in Possession filed a Status Conference Statement. Dckt. 41. The report provides the end of February balances in the bank account, the accounts receivable, other proceedings that may be required, and that a hearing on a Motion to Confirm is set for April 13, 2023.

At the Status Conference the Parties requested that the Status Conference be continued to April 13, 2023, so it could be conducted shortly after the April 5, 2023 continued First Meeting of Creditors. Additional, the Parties agreed that the hearing on the Motion to Confirm the Chapter 13 Plan be continued to 11:30 a.m. on May 18, 2023, to allow the parties to address issues and possible oppositions through discussions rather than having to file oppositions for matters which the Debtor may be addressing.

The Debtor in Possession provides information in support of the Debtor qualifying as a family farmer eligible to file a Chapter 12 bankruptcy case. Attached to the Statement are copies of tax return information concerning the Debtor's farming income and debt.

The Chapter 12 Trustee reports that the two Debtors and counsel appeared at the March 15, 2023 First Meeting of Creditors, and that the Meeting has been continued to April 5, 2023. Trustee March 15, 2023 Docket Entry Report.

The proposed Chapter 12 Plan filed on March 8, 2023 (Dckt. 34) provides for creditors divided into classes of claim. The Plan is to be funded from the continued farming operations. The two Debtors provide their Declaration addressing the events that lead up to the filing of this Chapter 12 Bankruptcy Case, the changes going forward, and the basis of their belief as to how going forward they will be able to perform the Plan. Dckt. 39.

The Status Report does not address the accuracy of the information of the Schedules that the two Debtors own extensive real property, but no personal property assets. (See the Minutes below from the February 9, 2023 Status Conference.) This include stating they have no household goods, no electronics, no clothing, no retirement savings, no crops (either growing or harvested), and no accounts receivable or other obligations owed to them by another person. This is contradicted in part by the Status Conference Statement. No amended Schedules A/B has been filed.

The court also notes that no property is claimed as exempt on Schedule C. Dckt. 14 at 19.

On Schedule I, Debtor states having no income from the farming operation. *Id.* at 44-45.

## **FEBRUARY 9, 2023 STATUS CONFERENCE**

This Chapter 12 case was filed on December 8, 2022. The Chapter 12 Trustee reports that the First Meeting of Creditors has been continued to February 17, 2023. January 12, 2023, Trustee Docket Entry Report.

The debtors in this case are two individuals. The Chapter 12 Debtor's Schedules were filed on December 15, 2022. Dckt. 14. The assets identified include:

- A. Nine parcels of real property.
- B. Twenty (20) vehicles (some of which are farm equipment).
- C. No household goods or furnishings.
- D. No Electronics.
- E. No Clothing.
- F. No Jewelry.
- G. Several bank accounts.
- H. Additional farm tractors and equipment.
- I. No accounts receivable or other amounts owed them by someone else.

On Schedule C, *Id.*, Debtor claims no exemptions.

On Schedule I, debtor Hardave Dulai states he is self-employed and debtor Sukhbinder Dulai states she is an educator employed by the Yuba County Schools. *Id.*, p. 44-45. Debtor Hardave Dulai has \$0.00 in income from the farming operation, and debtor Sukhbinder Dulai is the sole income generator with her monthly wages from her job in education.

On Schedule J, Debtor lists four dependants and a parent (but does not list the parent providing any contribution for expenses), and that Debtor's monthly net income is \$32.75. *Id.* At 45-46.

On the Statement of Financial Affairs the income information is somewhat different:

<b>Debtor Hardave Dulai</b>		<b>Debtor Sukhbinder Dulai</b>
	<b>2022 Income (11 Months)</b>	
\$0.00	Wages	\$0.00
\$0.00	Operating a Business (Gross Income)	\$0.00

	<b>2021</b>	
\$0.00	Wages	\$0.00
\$927,032.00	Operating a Business (Gross Income)	\$0.00
	<b>2020</b>	
\$0.00	Wages	\$40,293.00
\$0.00	Operating a Business (Gross Income)	\$0.00

*Id.*, 49-50.

As of the court's February 6, 2023 review of the Docket, no Status Report had been filed by Debtor.

At the Status Conference, counsel for the Chapter 12 Debtor requested that the Status Conference be continued 30 days to allow lead counsel, Mr. Dwiggins to be present.

The Chapter 12 Trustee reported that since Mr. Dwiggins could not be at the First Meeting of Creditors and it had to be continued. At the First Meeting, the Chapter 12 Trustee was told that there was no insurance on the property of the bankruptcy estate. One general certificate was provided, but no information about what insurance was provided.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Continued Status Conference having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on**  
**XXXXXXX**, 2023.



# FINAL RULINGS

4. [17-26064-E-13](#)      MARTIN/MARIA ORTEGA      CONTINUED STATUS CONFERENCE RE:  
[23-2023](#)      COMPLAINT  
CAE-1      2-27-23 [[1](#)]

**ORTEGA ET AL V. TEDESCHI**

**Final Ruling: No appearance at the June 21, 2023 Status Conference is required.**

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Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: unknown

Adv. Filed: 2/27/23  
Answer: none

Nature of Action:  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 5/10/23. Counsel for Plaintiff-Debtor reported that Defendant has been evading service and the service by mail has been returned. Plaintiff-Debtor requested a short continuance for counsel to review the alternative service options.

Request for Entry of Default by Plaintiff filed 6/3/23 [Dckt 15]

Entry of Default and Order Re: Default Judgment Procedures filed 6/7/23 [Dckt 16]

<b>The Status Conference is continued to 2:00 p.m. on July 19, 2023.</b>
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## **JUNE 21, 2023 STATUS CONFERENCE**

On June 7, 2023, the court entered the default of Defendant George Tedeschi in this Adversary Proceeding. Dckt. 16. The Plaintiff-Debtor must now proceed with the filing of a motion for a default judgment within thirty days of the entry of the default of the Defendant.

The court continues the Status Conference in light of the entry of the default and Plaintiff-Debtor now proceeding with the filing of the motion for a default judgment.

## **MAY 10, 2023 STATUS CONFERENCE**

## Summary of Complaint

The Complaint filed by Martin and Maria Ortega (“Plaintiff-Debtor”), Dckt. 1, asserts claims to determine the extent of a lien and breach of contract. It is alleged that Defendant George Tedeschi has a secured claim which was provided for in Plaintiff-Debtor’s Chapter 13 Case. Plaintiff-Debtor made plan payments to Defendant. Plaintiff-Debtor has completed the Chapter 13 Plan, has proceeded with a sale of the property securing Defendant’s claim, and disputes the amount of the balance remaining on Defendant’s secured obligation.

For the First Cause of Action Plaintiff-Debtor seeks the determination of the extent, validity, and priority of Defendant’s lien and the proper application of the Chapter 13 Plan payments received by Defendant. This focuses on \$85,218.00 which Plaintiff-Debtor states were principal payments made pursuant to the confirmed Chapter 13 Plan on the obligation owed to Defendant as amended by the confirmed Chapter 13 Plan.

The Second Cause of Action asserts a breach of contract claim against Defendant for the failure to properly apply the Chapter 13 Plan payments on the secured claim as amended by the confirmed Chapter 13 Plan.

Plaintiff-Debtor seeks recovery of contractual attorney’s fees.

## Summary of Answer

No Answer or other responsive pleading has been filed by Defendant George Tedeschi.

## Final Bankruptcy Court Judgment

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 3, 4, Dckt. 1. Further, that this Action necessarily requires the enforcement of this court’s order confirming the Chapter 13 Plan, enforcement of the provisions of the Plan, and determination of the proper application of the payments as provided in the Chapter 13 Plan

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference having been conducted by the court, and upon review of the files in this case, report of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on July 19, 2023**. If the Plaintiff-Debtor has filed and set for hearing the motion for default judgment, the court will continue the Status Conference to the hearing on the motion for default judgment.